

Message Text

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ACTION EB-06

INFO OCT-01 ARA-06 ISO-00 SS-15 SP-02 L-02 H-01 NSC-05

PRS-01 DOTE-00 AID-05 CIAE-00 COME-00 FRB-01 INR-05

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FM AMEMBASSY SAN SALVADOR

TO SECSTATE WASHDC PRIORITY 6689

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E.O. 11652 - N/A

TAGS: ELTN, EINV, BEXP, ES

SUBJ: GOES TAKEOVER OF IRCA

REF: SAN SALVADOR 4064

SUMMARY: DURING COURSE OF CONVERSATION WITH FONMIN BORGONOVO ON 21 OCTOBER, REPORTED SEPTTEL, WE TOOK THE OPPORTUNITY TO RAISE THE MATTER OF IRCA. WE (THE AMBASSADOR, DCM AND ARA/CEN: DLAZAR) MADE CLEAR TO BORGONOVO OUR CONCERN THAT IRCA BE ALLOWED A QUOTE DAY IN COURT UNQUOTE ON THE MATTER OF COMPENSATION. END SUMMARY.

2. DURING THE COURSE OF THE 21 OCTOBER MEETING WITH FONMIN BORGONOVO, THE MAIN POINTS OF WHICH HAVE BEEN REPORTED BY SEPARATE CABLES, WE RAISED THE MATTER OF IRCA. THIS WAS DONE IN THE SPIRIT OF MUTUAL CONSULTATION WHICH HAS CHARACTERIZED OUR PAST DEALINGS ON THIS MATTER AND SINCE THE NEXT PIECE OF THE SCENARIO WAS MOST LIKELY TO TAKE PLACE IN WASHINGTON. WE TOLD THE FONMIN THAT WE EXPECTED IRCA TO APPROACH EITHER THE DEPARTMENT OR CONGRESS, TO CLAIM THAT ITS PROPERTY HAD BEEN EXPROPRIATED WITHOUT COMPENSATION AND TO REQUEST USG SUPPORT. (IN PASSING WE MENTIONED HE PROBABLY WOULD ATTEMPT LIMITED OFFICIAL USE

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TO INVOKE THE HICKENLOOPER OR GONZALES AMENDMENTS). WE IN-

FORMED BORGONOVO THAT SHOULD IRCA MAKE THIS APPROACH, OUR REPLY WOULD BE THAT IRCA HAD NOT YET EXHAUSTED ITS REMEDIES FOR COMPENSATION UNDER SALVADORAN LAW AND THAT THEREFORE THERE EXISTED NO BASIS FOR USG ACTION AT THIS POINT. WE POINTED OUT TO BORGONOVO THAT OUR POSITION UNDER BOTH INTERNATIONAL LAW AND THE US LEGISLATION BASED ON IT IS THAT IRCA IS ENTITLED TO A FAIR, LEGAL DETERMINATION -- A DAY IN COURT -- ON ANY QUESTIONS OF LAW INVOLVED IN THE ISSUE OF COMPENSATION BUT NOT THAT IT HAS A RIGHT TO IMMEDIATE COMPENSATION AS SUCH. THE QUESTION OF COMPENSATION IS ONE TO BE DETERMINED BY THE APPROPRIATE SALVADORAN ENTITY. ALTHOUGH HE MADE NO COMMENT, BORGONOVO CLEARLY UNDERSTOOD THE POSITION AND SEEMED TO FIND IT UNEXCEPTIONABLE.

3. WE MENTIONED TWO BASES OF LEGAL CONTEST WHICH MIGHT OCCUR TO IRCA: 1) THE RIGHT OF THE GOVERNMENT TO OBTAIN THE BENEFITS OF REVERSION TO THE STATE (I.E. WITHOUT COMPENSATION OR ASSUMPTION OF OBLIGATIONS) AS IF THE CONCESSION HAD RUN ITS 99-YEAR COURSE, AND 2) A CLAIM TO COMPENSATION BASED ON NET WORTH; E.G. RECOVERY OF PROFIT FORGONE HAD IT BEEN ABLE TO TRANSFER ITS CONCESSION BY SALE TO ANOTHER PARTY.

4. BORGONOVO'S MATTER OF FACT RESPONSE ACKNOWLEDGED THESE POSSIBLE LEGAL CONTESTS. HE OBSERVED THAT THE GOVERNMENT'S ACTION REFLECTED ESSENTIALLY TWO CONCLUSIONS: 1) IRCA WAS NOT FULFILLING THE MINIMUM REQUIREMENTS OF SERVICE CALLED FOR IN THE CONCESSION, AND 2) THERE IS NOTHING IN THE CONCESSION EXPLICITLY PROHIBITING THE CESSATION OF THE CONCESSION. IN HIS PASSING REFERENCE TO IRCA'S "FRAUDULENT ACTIONS" (E.G. ILLEGAL REPATRIATION OF EARNINGS IN VIOLATION OF EXCHANGE CONTROLS) ONE COULD SEE THE HINT OF WARNING THAT THE GOVERNMENT WAS NOT LACKING IN LEGAL AMMUNITION SHOULD THE ISSUE HEAT UP.
CAMPBELL

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